IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4291 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CAMPUS DIRECTOR

Versus

KANAIYALAL R MOTWANI

Appearance:

1. Special Civil Application No. 4291 of 2000

MR DG CHAUHAN for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/06/2004

ORAL JUDGEMENT

The Gujarat Agricultural University has approached this Court under Article 227 of the Constitution of India to challenge the judgment and award

made by the Presiding Officer, Junagadh dated 1st November, 1999 in Reference [L.C.R.] old No. 682 of 1989 and Reference [L.C.J.] new No. 1495 of 1990. By the said award, the Reference of the respondent is partly allowed and the petitioner is directed to appoint afresh the respondent on his original post without payment of backwages and other incidental benefits.

1.1. From the record of this petition, it appears that the respondent was working as tracer-cum-clerk with the then Government Agricultural College with effect from 1st December, 1965 at the monthly salary of Rs.700=00. It further appears that during his service, he was often remaining absent from the duty for which he was adequately warned. It further appears that on 26th January, 1972 he submitted his resignation. However, till 1975, the administration of Government Colleges remained with the Government. It was only on 2nd February, 1975 the State Government transferred all the employees and activities to the petitioner. The respondent on 20th September, 1985 wrote letter to the petitioner stating that since his resignation was not accepted till then, he be permitted to withdraw the same and he be allowed to resume duty. It appears that no positive reply was given by the petitioner in the said letter. The respondent immediately did not do anything. It was in the year 1989 i.e. about four years thereafter, he raised dispute which was ultimately, referred to the Labour Court for adjudication by the Assistant Labour Commissioner, vide order dated 21st April, 1989.

1.2. Before the Labour Court, the respondent filed statement of claim which is dated 27th February, 1990. In the said statement, it was averred by the respondent that he had joined the service of the petitioner with effect from 1st December, 1965 as tracer-cum-clerk at monthly salary of Rs.700=00. He has further averred that on 20th September, 1985 he had written Registered A.D. letter to the petitioner expressing his desire to withdraw his resignation which was still then not accepted by the petitioner and it was requested that he be permitted to resume the duty. It was further averred that when he went to report for the duty he was not allowed to join it and thereby, he was without following any procedure by the petitioner dismissed from the service. He has further averred that before terminating his service no procedure has been followed by the petitioner, nor any retrenchment compensation or salary in lieu of the notice were paid to him. It is further averred that at the time when he was relieved from the

service his junior was continued and even new persons were employed by the petitioner on his place. He ultimately, prayed that the decision of the petitioner dated 20th September, 1985 relieving him from the service be declared as illegal and petitioner be directed to reinstate him on his original post with continuity of service and backwages and other incidental benefits.

1.3. The said Reference was contested by the petitioner by filing written statement. It is contended by the petitioner that there was no relationship of master and servant between the petitioner and the respondent and, therefore, the Reference was not maintainable. It was further contended that on examining the old record it was found that the respondent was employed in the service with effect from 14th December, 1965 in the office of Sub Divisional Oil Conservation, Amreli as Officiating Officer, but during his service he was remaining absent. It is also contended that it was not true that he had been dismissed from the service on 20th September, 1985 without following any procedure for payment of salary, retrenchment compensation etc. In paragraph 8 of the written statement the petitioner has given details regarding the repeated absence of the respondent and it has been stated that on 13th September, 1971, the respondent had submitted leave report and thereafter, he had never resumed the duty. He was, therefore, intimated by letter dated 5th January, 1972 to report for duty. But on 26th January, 1972, he tendered his resignation. These averments have been made by the petitioner after referring to the relevant record. It is also averred that the respondent had with a view to get his resignation accepted, deposited one months' salary and cycle advance, to be paid together with interest, in all Rs.216=00 on 14th June, 1974 vide challan no. 10. Lastly, it was stated that the respondent was in fact having a store in the area know as Mandvi in Jungadh in the name of style of "Kashmir Silk". It was, therefore, prayed that the Reference has no merit and it deserves to be dismissed.

2. During the trial, the respondent filed the affidavit and he was also cross-examined by the other side. Apart from that, some documentary evidence was also produced. The Labour Court on the strength of the material that was produced before it came to the conclusion that the respondent was constrained to tender his resignation from the service because of the mental strain and harassment caused by the superior officer. It was further concluded by the Labour Court that since the resignation was not given at his own will it could not be

termed as resignation and it was not effective at all. It appears that during the course of the trial, the respondent had given pursis at Exh.45 giving up his claim with regard to backwages for certain period. Considering all these factors, the Labour Court thought it fit to partially allow the Reference with the aforesaid direction. It is this award which is now challenged by the petitioner.

3. Mr. D.G. Chauhan learned advocate appearing for the petitioner has submitted that the award of the Labour Court is perverse and the finding given by it are dehors the record and the direction for giving fresh appointment to the respondent is absolutely illegal. According to him, the respondent after 13 years of his tendering resignation had written letter requesting the petitioner to permit him to withdraw his resignation and also to permit him to join the duty and it was after four years and thereafter he had filed this Reference. According to Mr. Chauhan for this reason alone the relief claimed by the respondent could not be granted.

3.1. As against that Mr. M.H. Rathod learned advocate appearing for the respondent has supported the judgment and award of the Labour Court. According to him when the resignation was not accepted and when it was given in the mental exasperation, the petitioner was entitle to reinstate him. In his submission, since the resignation was not accepted, it cannot be said to be accepted. When he was not permitted to join it in 1985 by the petitioner, it amounted to terminating his service without following the procedure. He, therefore, submitted that the direction given by the Labour Court was just and proper and no interference was required to be made by this Court.

4. Having carefully considered the record and also the submissions of both the learned advocates, it appears that at the time the respondent joined the service of the erstwhile Government College, the petitioner University had not come into existence. It was set up sometime in the month of June, 1972. The respondent had resigned from the service of the Agricultural Government College on 26th January, 1972. If the resignation is perused, it is clear that it has been given on the ground of respondent not being able to attend the duty because of the same social commitment and nothing more has been stated. From the resignation it does not at all appear that it was given on account of mental harassment caused to him by his superior officer. Nature of the resignation also shows that it was given voluntarily and

not on account of mental exasperation or harassment caused to him during the course of his service. It further appears that when the staff of the Government College and the affairs of the administration of the College were entrusted to the petitioner in the month of February, 1975 by the State Government, the respondent was not attending the duty. It also appears that for 13 long years the respondent did not do anything and for the reasons best known to him, it was only on 20th September, 1985 that he wrote letter requesting the petitioner to permit him to withdraw his resignation. One fails to understand that what prevented the respondent for 13 years not to change his mind to withdraw the resignation earlier. The story is now created simply with a view to win sympathy of the Labour Court. It is but natural that when the resignation was sought to be withdrawn by the respondent after 13 long years, the petitioner would not respond to any such letter and even if the respondent had gone to report for the duty, the petitioner was well within its bound not to permit him to join the duty. That would never mean that he was dismissed from the service on that date. According to the petitioner, this happened on 20th September, 1985. If the respondent was adversely affected by the action of the petitioner he would have immediately raised dispute and would have gone to the Labour Court, but he had sat quite for another four years and it was only in the year 1989, he had raised the industrial dispute which was referred to the Labour Court for adjudication. From the pleadings and affidavit that have been filed by the respondent before the Labour Court, it appears that he has not remained consistent in his version. In the statement of claim he has not stated a word about resignation that was tendered on 26th January, 1972. He has also not tendered any explanation why he did not or could not make request to the petitioner to permit him to withdraw his resignation for 13 years. The story that has been told before the Labour Court appears to have been created for the first time. This version has not been stated by the respondent anywhere. The finding of the Labour Court to the effect that the respondent was required to tender resignation under compelling circumstances and because of the mental harassment caused to him; hence, it was not resignation in the eye of law. Such fidning is erroneous and it is based on the material which does not at all inspire confidence. In fact there is no such material on record. Hence, the same is perverse and it is required to be quashed and set aside. If that is done, the final direction of the Labour Court also does not stand and that is also required to be quashed and set aside.

The result is this petition is allowed. The award of the Labour Court dated 1st November, 1999 in Reference [L.C.J] new no. 1495 of 1990 is quashed and set aside. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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